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Opinion following transfer from Supreme Court

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

KARA TAYLOR BRAYTON,

Defendant and Appellant.

2d Crim. No. B284408
(Super. Ct. No. 2016005604)
(Ventura County)

OPINION FOLLOWING ORDER
VACATING PRIOR OPINION

On June 17, 2020, the California Supreme Court, after granting review of our July 31, 2018, decision, transferred this case back to our court with directions to vacate our decision and reconsider in light of *People v. Jimenez* (2020) 9 Cal.5th 53. After reconsideration, we now vacate our prior decision and affirm the order of the trial court denying Brayton's motion for relief under Proposition 47.

Kara Taylor Brayton appeals an order denying her motion for resentencing under Proposition 47, the Safe Neighborhoods

and Schools Act. (Pen. Code, § 1170.18.)¹ She previously pled guilty to identity theft (§ 530.5, subd. (a)), a felony. In her motion for Proposition 47 relief, Brayton claimed her “conduct” in committing that identity theft offense met “the elements of shoplifting” under Proposition 47 and her conviction should be reduced to a misdemeanor. We conclude the trial court correctly ruled Brayton was ineligible for resentencing under Proposition 47. We affirm.

FACTS

On February 5, 2016, Brayton entered the Kohl’s store in Simi Valley. She took a watch from the jewelry department and removed the security tag. She also “removed a bra from a hang[e]r and balled it up in her arm.”

Brayton then went to the store’s “customer service department” to falsely claim that she had previously purchased these items and was seeking a “store credit” in the amount of \$107.07. To obtain this credit, Brayton presented a California driver’s license which belonged to Ambar Lechuga. Someone had previously stolen Lechuga’s license.

Brayton was detained and questioned by two of the store’s “loss prevention employees.” During questioning, Brayton was unable to spell Lechuga’s name or provide the year Lechuga was born.

One of the store’s security employees called the police. Brayton “fled from the store” and drove away. When ultimately contacted by police, Brayton said she “did something wrong and did not have an explanation as to why she tried to shoplift.”

¹ All statutory references are to the Penal Code.

In the “felony information,” the People alleged Brayton committed “the crime of IDENTITY THEFT-OBTAIN CREDIT WITH OTHER’S IDENTIFICATION, in violation of Penal Code 530.5(a), a Felony” (count 1), and petty theft by taking Kohl’s property, a misdemeanor (§ 484, subd. (a)) (count 2).

Brayton pled guilty to both counts and admitted she “did what is alleged in [the information].”

On May 18, 2017, Brayton filed a “motion to reduce count 1 to a misdemeanor pursuant to [Proposition 47].” She relied on *People v. Gonzales* (2017) 2 Cal.5th 858 as authority for the motion. She claimed that under *Gonzales* she “can only be charged and sentenced as a misdemeanant for her shoplifting conduct.”

The People opposed the motion, claiming “[v]iolations of section 530.5(a) are not eligible for reduction under Proposition 47.”

The trial court denied the motion. It agreed with the People’s position that Brayton’s conviction was not an eligible crime for Proposition 47 resentencing. The court said, “I don’t think *Gonzales* applies.”

DISCUSSION

Eligibility for Resentencing Under Proposition 47

Brayton contends the trial court erred in ruling she was ineligible for resentencing under Proposition 47. We disagree.

In our prior opinion, we ruled Brayton’s felony identity theft conviction could fall within the resentencing relief provisions of Proposition 47. We compared her crime to the type of shoplifting or theft offenses that qualify for resentencing relief under Proposition 47.

But in *People v. Jimenez*, *supra*, 9 Cal.5th at page 58, our Supreme Court said, “What we must decide here is whether a felony conviction for misuse of personal identifying information under section 530.5, subdivision (a) can be reduced to misdemeanor shoplifting under Proposition 47, which was approved by voters in the November 4, 2014 General Election. We hold that it cannot.” The court stated, “[M]isuse of personal identifying information is not a ‘theft’ offense” under Proposition 47, and it is “wholly distinct from what a shoplifting conviction would require.” (*Id.* at p. 71.)

Because of the *Jimenez* decision, we vacate our prior decision and we affirm the trial court’s order denying Brayton’s motion.

DISPOSITION

The order denying the Proposition 47 motion is affirmed.

GILBERT, P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Patricia M. Murphy, Judge

Superior Court County of Ventura

Todd W. Howeth, Public Defender, William Quest, Senior Deputy Public Defender.

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